

Updated August 30, 2023

JUDGE NAME: *Sarah C. Makin*

DISTRICT: *Southeastern Pennsylvania*

ASSIGNED OFFICE: *Springfield, Delaware County*

ASSISTANT INFORMATION: [WCOA-Judges-Office-Contacts \(pa.gov\)](http://wcoa-judges-office-contacts.pa.gov)

JUDGE'S PROCEDURAL RULES AND POLICIES

All communications with the Judge should be submitted through WCAIS unless otherwise specified by the Judge. All documents, including requests, letters, evidence and briefs, should be uploaded into WCAIS. **If Social Security numbers or Claimant's date of birth appear on any such document, they should be completely redacted before the document is uploaded, unless otherwise specified below.**

*****If you need a response from Judge Makin, please use the REQUEST section of WCAIS.**

If you are giving a status on the case or submitting an informational letter, use the Documents and Correspondence section of WCAIS. Do not email Judge Makin unless you are responding to an email from her. Judge Makin does not review email during hearings.

HEARING PROCEDURES

All hearings will be conducted virtually by video in Microsoft Teams

1. What is the first event and what will occur?

All hearings are conducted by video. All counsel must appear at the hearing identified by name on the screen when joining a hearing. All first hearings on cases, status hearings, and arguments are conducted via one video link between 9:00 am and 10:30-11:00 am. These hearings are given slots of 10 minutes per case. A docket is sent prior to the day of the hearing listing a time for each case.

Hearings for testimony and Compromise and Release Hearings are scheduled individually with separate meeting links. Compromise and Release Hearings are scheduled for 15 minutes each. Hearings for testimony are scheduled for 45 minutes each.

Hearings are conducted by Video in Microsoft Teams. An invitation to the Hearing will be emailed to counsel and unrepresented parties prior to the hearing. It is counsel's responsibility to ensure that the invitation is forwarded to the correct attorney if another counsel is covering the hearing for the counsel who entered their appearance. Do not ask the Judge's office to resend the invitation to an attorney who is not attorney of record. Check your email address and direct dial phone number in WCAIS to insure they are correct.

By agreement of Counsel, the trial schedule for any case can be given in WCAIS and a hearing avoided. Uncontested Petitions to Compel can also be granted with agreement of Counsel without a hearing. Put a request in WCAIS to have the trial schedule issued in WCAIS or to have a physical examination petition granted by agreement.

If counsel or a party misses a hearing, it is appropriate to call opposing counsel to determine what happened at the hearing. Counsel is also advised to check the notes of testimony from the hearing to determine what transpired at the hearing.

a. List any documents required at the first event:

*At the first hearing, the Parties are **required** to upload all Bureau documents or Workers' Compensation Judges' decisions that codify the way compensation was initiated and modified, suspended, or terminated. A Statement of Wages should also be provided. These can be uploaded in advance into WCAIS in the exhibits section.*

b. Should documents be uploaded as Exhibits or Letters to the Judge?

*Exhibits – **No mini script depositions will be accepted.***

2. Describe the format of your hearings (e.g., serial, one day – one trial).

*For each case, there are two hearings. At the first hearing, the trial schedule is placed on the record and the final hearing is scheduled several months later for brief update testimony from the Claimant and to close and certify the record. All evidence should be uploaded in WCAIS as it is developed so that the admissibility of the evidence can be determined, and the record certified. **Upload all evidence at least three days before the final hearing.***

An interim hearing can be scheduled for fact witness testimony if it desired. Fact witnesses can always testify by deposition. Fact witness hearings are scheduled after Claimant's deposition is taken.

After all hearings, an Interlocutory Order will be issued compelling Claimant to appear at an IME consistent with the trial schedule should one be scheduled.

After all hearings, an Interlocutory Order will be issued instructing Claimant's counsel how to preserve the right to an attorney fee under Lorino v. WCAB, 266 A.3d 487 (PA, 2021). The request must be made on the record or it will be deemed to be waived. In addition, Counsel must submit documentation of Counsel's hourly rate, an affidavit of experience, the number of hours spent on any activity and the legal work performed during that time. This must be submitted for all attorneys who work on the case. If this is not submitted and the request is properly preserved, an hourly rate of \$50.00 an hour will be presumed.

3. Are you willing to change the hearing format upon request?

In rare circumstances, upon good cause shown.

4. What factors will you consider in deciding whether to conduct a hearing in-person?

Multiple factors are considered on a case by case basis.

5. What factors will you consider in deciding whether to conduct a virtual hearing by audio only or by audio with video?

Virtual Hearings are by video only.

6. What procedure do you follow if a party fails to appear at a hearing?

This is entirely dependent on the situation. The Hearing will proceed whenever possible. A record will be taken and counsel who missed the hearing can call opposing counsel or get the Notes of Testimony to ascertain what happened at the hearing. Do not call the Judge's office to determine what happened. Call opposing counsel.

7. Do you have special procedures for psychological injury cases?

No

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

a. Will testimony be heard?

No. No testimony will be heard at a supersedeas hearing. Supersedeas documents should be uploaded into the supersedeas section of WCAIS 3 days before the hearing. Additional time may be given to the responding party to obtain evidence to oppose supersedeas. After both parties have submitted their evidence on supersedeas, a ruling will be issued. If no ruling is issued by the Judge, counsel may request a ruling through the requests section of WCAIS. The attorney fee should be uploaded as an exhibit in the case in chief. In addition, Bureau documents should be uploaded in the case in chief.

b. Is additional time generally granted to obtain medical evidence?

Yes, but only after a request is made detailing why the additional time is needed and the current status of the case.

c. Under what circumstances will you reconsider a supersedeas order?

A supersedeas order will only be reconsidered based upon newly discovered, compelling evidence that was not available at the time of the original hearing. A request for reconsideration of a supersedeas ruling should be submitted through the requests section of WCAIS with the argument and evidence uploaded with the request.

- d. Do you generally use written orders for denials?** *Yes. After both parties have submitted their evidence on supersedeas, a ruling will be issued. If no ruling is issued by the Judge, counsel may request a ruling through the requests section of WCAIS.*
- e. What is required for employee's counsel to obtain interim fee approval?** *Counsel can request an interim fee by uploading the fee agreement in the exhibits section of WCAIS and then requesting an order in the requests section of WCAIS.*
- f. Describe any other procedures for supersedeas hearings:**
There are no other special procedures.

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

Claimant's testimony takes place at the final hearing and is limited to update testimony from the date of Claimant's deposition forward. If a request is made to present fact witness testimony before the Judge, this occurs after Claimant's deposition. All hearings are conducted virtually.

2. Do you require testimony at a virtual hearing, an in-person hearing, or by deposition?

At all hearings, Claimant's testimony takes place at the final hearing and is limited to update testimony from the date of Claimant's deposition forward. Fact witness testimony is scheduled after Claimant's deposition.

3. Under what circumstances will you change your requirements for presentation of testimony?

Multiple factors are considered on a case by case basis.

4. If counsel wishes to present the testimony of a witness, virtually, do you require prior notice?

Yes

If yes, how much notice do you require? *Counsel should inform the Judge of the need for a virtual hearing for testimony as soon as it is known.*

5. What is your procedure regarding the order of expert medical testimony when cross petitions are filed?

It depends on the facts of the case.

6. Do the parties need to upload the Bureau and WCOA documents as exhibits, or will you admit them electronically as Judge exhibits?

The Parties need to upload these exhibits. This should be done prior to the first hearing. Please refer to Question and Answer 1(a).

7. Do you require counsel to upload exhibits to WCAIS before or after the hearing? Yes

If before, how far in advance of the hearing must they be uploaded? Exhibits should be uploaded as they are developed and at a minimum of 3 days prior to the hearing. No mini script depositions will be accepted. Please check to make sure that all evidence offered for admission during the deposition is attached to the uploaded copy of the deposition.

8. When will you rule on objections to exhibits?

Objection to the admission of exhibits will be ruled on when the exhibit is offered for admission at a hearing.

9. What is your procedure for handling discovery disputes?

It depends on the facts of the case. Disputes can be brought to the Judge's attention by use of the Requests section of WCAIS.

10. What is the last day to file written preservations of deposition objections?

Preservation of objections made during depositions must be uploaded as an exhibit. The last day to submit preserved objections is three (3) days prior to the last hearing.

COMPROMISE & RELEASES (C&Rs)

Do not request a Compromise and Release unless correct, executed Compromise and Release Agreements are uploaded pursuant to the following procedures.

1. Describe your procedures regarding the review of C&R Agreements:

Compromise and Release Hearings are not scheduled until correct, executed and redacted copies of the Compromise and Release Agreements are uploaded and admitted into evidence by the Judge.

When a case has settled, upload a redacted and an unredacted copy of the final, executed Compromise and Release Agreement. All exhibits shall be uploaded with the Agreement. Counsel

should then enter a request for a hearing through the requests section in WCAIS. A hearing will be scheduled when the executed final C&R Agreement is admitted. Mistakes in the Agreements will cause delay in scheduling the hearing. See below for drafting information and a checklist.

- a. Are you willing to allow amendments of existing petitions or do you require the filing of a separate Petition Seeking Approval of a C&R Agreement?** *Yes, amendments are allowed.*
- b. Are parties required to provide a draft of the C&R Agreement before the hearing? If yes, how far in advance of the hearing do you need to receive it?**

No, do not provide a draft. A redacted and an unredacted copy of the final, executed Compromise and Release Agreement must be uploaded at least 3 days BEFORE the hearing or before a hearing is scheduled or moved up. All exhibits shall be uploaded with the Agreement.

- c. Should the parties upload the signed C&R Agreement, including the fee agreement and any other attachments, before or after the hearing?**

Yes, before the hearing. All exhibits must be attached to the final, executed copy of the Compromise and Release Agreements.

- d. Should child support documents be uploaded as a separate exhibit?**

No

- e. Should Social Security numbers and other confidential information be redacted from the C&R Agreement and Act 109 documents?**

Yes

- f. Will you sign bench orders?**

No

- g. Describe any other procedures you have for C&R Agreements:** *Yes, see below.*

Drafting the Compromise and Release Agreement:

Judge Makin requires that paragraph ten of the Compromise and Release Agreement contain certain information in the first lines of the paragraph and not in the addendum. The first three typed lines of paragraph ten of the C&R agreement must have the total amount of the settlement, any deductions from the settlement and the amounts of the deductions (attorney fee, child support, reimbursement to a litigation loan company, the specific medical bills being paid out of Claimant's lump sum, etc.) and finally, the net to the Claimant. If the specific compensation being paid to the Claimant is not contained in the Agreement, it cannot be approved. The Compromise and Release Agreement, Child Support documents, waiver of appeal, Alternative Delivery form and the fee agreement should be uploaded as one exhibit.

Compromise and Release Checklist:

- *General Advice – spell everything out in detail.*
- *Is everything signed and initialed?*
- *Is the Child Support Affidavit completed and initialed? ○ Is Claimant’s address correct and consistent on the Child Support Affidavit?*
- *Did you list all the deductions from Claimant’s lump sum compensation in paragraph 10 of the Agreement and the net to Claimant?*
- *Is paragraph 10 correctly drafted so that the specific amount of compensation to be paid to Claimant is apparent?*
- *Is there a litigation loan? Did you include it in paragraph 10?*
- *Is Claimant or Claimant’s attorney paying medical bills? Is the amount and provider specified? Has the provider agreed to accept that amount? Spell it out.*
- *Is paragraph 14 consistent with paragraph 13?*
- *Is there an Authorization for Alternative Delivery? Tell the Judge why in a letter in documents and correspondence or a miscellaneous request.*
- *Did you redact all evidence of the Claimant’s date of birth and social security number in all the documents? ○ Did you redact the date of birth on the first page of the Compromise and Release Agreement under Claimant’s name? **DO THE REDACTIONS COMPLETELY OBSCURE THE INFORMATION?***
- *Did you redact the date of birth and social security number in the Authorization for Alternative Delivery form?*
- *Can you see through the redactions you tried to do?*
- *Are there arrearages? Who is paying them, to whom and how? Is there a Non-Disbursement Order? Who had the responsibility to see that it is vacated? No one gets paid until it is vacated.*

STIPULATIONS RESOLVING DISPUTES

1. What are your usual procedures regarding the submission, review, and adoption of stipulations?

Stipulations should be uploaded as an exhibit. Once the Stipulation is uploaded, upload a request in the Requests section of WCAIS and request that the Judge adopt the Stipulation and tell the Judge which Petitions are resolved by the Stipulation. If there is no request to adopt the Stipulation with the Petitions noted, no decision will be issued.

2. Should the fee agreement be part of the stipulation or separate exhibit?

Either way is appropriate. However, remember to redact the date of birth and social security number.

3. Should child support documents be uploaded as a separate exhibit?

Either way is appropriate. However, remember to redact the date of birth and social security number.

4. What other exhibits should be uploaded (i.e. medical bills, etc.)?

It depends on the facts of the case and the details of the Stipulation.

5. Should other exhibits uploaded as be part of the stipulation or as separate exhibits?

It depends on the facts of the case and the details of the Stipulation..

6. When should Social Security numbers and other confidential information be redacted from the stipulation and Act 109 documents?

When the Stipulation is uploaded. A non-redacted copy of the Act 109 documents should be uploaded separately.

7. Describe any other procedures you have for stipulations:

No.

BRIEFS AND PROPOSED FINDINGS

1. Will you close a case via WCAIS submission or is a final hearing required?

A final hearing is required.

2. What are the time requirements for final submissions and what procedures are taken when time requirements are not met?

It depends on the facts of the case.

3. Describe any preferences regarding the format and content of final submissions:

See ATTACHMENT B, the Decision Outline at the end of this Questionnaire for format.

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

Mandatory Mediation are conducted virtually by video only.

- 2. What factors will you consider in deciding whether to conduct a mandatory mediation virtually or in-person?**

It depends on the facts of the case.

- 3. What factors will you consider in deciding whether to conduct a virtual mandatory mediation by audio only or by audio with video?**

Mandatory Mediations are conducted virtually by video only.

- 4. Are you willing to allow counsel or a party to participate virtually in an in-person mandatory mediation? If so, under what circumstances?**

No. If a Mandatory Mediation has been scheduled to be conducted in person, all parties must appear in person.

- 5. Do you require a Mediation Statement? Yes If yes:**

- a. What information do you require in that Statement?**

See ATTACHMENT A, the Mandatory Mediation Disclosure Statement at the end of this Questionnaire for format.

- b. What documents, if any, must accompany the Statement?**

It depends on the facts of the case.

- c. How far in advance of the mediation must the parties submit the Statement and accompanying documents?**

5 business days (not including weekends and holidays).

- 6. If there is a request to postpone a mandatory mediation, will it be rescheduled? No**

- 7. Are you willing to conduct more than one mandatory mediation session per Dispute?**

It depends on the facts of the cases.

- 8. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?**

It depends on the facts of the case but counsel should review the case the week before the mediation.

- 9. What else should the parties know or do before the mediation?**

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Parties should obtain final authority from their respective clients. All parties are expected to discuss the mediation process and settlement with their clients before the date of the mediation. Claimant is expected to convey Claimant's demand to opposing counsel prior to mediation.

VOLUNTARY MEDIATIONS

1. Do you conduct Voluntary Mediations? *No*

REQUESTS/MISCELLANEOUS

1. How far in advance do you require Requests for continuances, changes in hearing times, and extensions to be uploaded into WCAIS?

It depends on the facts of the case.

2. Under what circumstances do you conduct off the record conference calls?

It depends on the facts of the case but these are conducted rarely if ever.

3. Under what conditions/circumstances do you accept e-mails from parties?

Only when I have e-mailed the party first.

4. Do you adhere strictly to the duration listed for a Hearing or Mediation?

Yes

5. What is the best way to contact you in an emergency situation?

Contact Mrs. Cherry or the Springfield Office with the telephone numbers or e-mail provided.

6. What is your snow/emergency cancellation policy regarding in-person and virtual events (i.e., do you follow a specific school district closing schedule, etc.)?

Judge Makin conducts all hearings virtually. VIRTUAL HEARINGS AND MEDIATIONS ARE NOT CANCELLED BY WEATHER.

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ATTACHMENT A

MANDATORY MEDIATION DISCLOSURE REPORT

Each party must mail this completed form to the mediating Judge at least 5 days before mediation.

PARTY YOU REPRESENT:

YOUR NAME, ADDRESS AND PHONE NUMBER:

ASSIGNED JUDGE:

BASIC FACTS: ALL PARTIES TO COMPLETE

A. Claimant's age:

B. Date of Injury:

C. Last date of employment, AVERAGE WEEKLY WAGE AND RATE:

D. Claimant's job title and work duties (classify as heavy, moderate, or light duty)

E. Injury accepted by Bureau Document or Judge's Decision?

F. Description of Accepted injury and how it occurred:

G. Average Weekly Wage and Rate:

H. Status of Litigation:

CLAIMANT'S COUNSEL ONLY:

Briefly explain Claimant's medical treatment to date (physicians, prescriptions, likelihood of future surgery, etc.)

Are there outstanding medical bills? If yes, what are the amounts?

Amount of medical expenses Claimant is incurring per year (also identify any anticipated large medical expenses)

Is Claimant on Social Security Disability or has Claimant applied/will apply?

Has Claimant applied for a light duty job with any other employer? Why not?

EMPLOYER'S COUNSEL ONLY:

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By completing this form, Employer's counsel certifies and agrees an adjuster or other decision maker with appropriate authority to resolve the case will be available at all times during the mediation by telephone only if personal appearance at the mediation by the adjuster or decision maker is impossible.

Has an IME been performed? By whom? What were the results?

Has Employer offered Claimant light duty/modified work with the preinjury employer? If not, why not?

Please summarize medical expenses paid to date.

ALL PARTIES TO COMPLETE

1. EXPLAIN YOUR ANALYSIS OF THE MERITS OF THE CASE (including basic background facts, medical evidence, credibility of witnesses, etc.)
2. **IDENTIFY THE STRENGTHS AND WEAKNESS OF EACH PARTY'S CASE**
3. HAVE SETTLEMENT NEGOTIATIONS OCCURRED? IF NOT, WHY NOT? (Explain thoroughly. If yes, what was the result?)
4. WHAT FACTORS OR ISSUES DO YOU VIEW AS IMPEDIMENTS TO REACHING ANEGOTIATED SETTLEMENT?
5. DO YOU BELIEVE THAT A NEGOTIATED SETTLEMENT IS POSSIBLE?
6. OUTLINE YOUR SETTLEMENT PROPOSAL. BE CONCISE, BUT THOROUGH.

RANK EACH COMPONENT (i.e., indemnity amount, future medical coverage, etc.). IN ORDER OF IMPORTANCE FROM FIRST TO LAST

1. 2.
- 3.

7. WHICH COMPONENT IS/ARE NEGOTIABLE?

8. WHICH IS/ARE NOT NEGOTIABLE?

9. Are there other ancillary issues that might impact the outcome of the mediation, such as resignation, pension, unrelated employee benefits (e.g., lifetime flight privileges), health insurance, spouse working with health insurance, concurrent losses such as benefits, vacation days lost, sick time lost and/or vacation time that might need to be reimbursed, and any other issues that might impact the success of the mediation? If so, please explain.

ATTACHMENT B

DECISION OUTLINE

The following is offered to assist attorneys in their preparation and submission of proposed findings of fact and conclusions of law. In appropriate cases, well prepared submissions, supported by evidence of record, will be adopted to form the basis of this Workers' Compensation Judges decision.

Outline and Order of Decision

Exhibits: *All the Claimant's, Employer's, Provider's, and Judge's/Bureau Exhibits must be listed. Please note that I rarely use the term 'Defendant'. I generally use the term 'Employer' and if appropriate 'Carrier'.*

Ruling on Preserved Objections: *If objections have been preserved and no decision has been issued ruling on the preserved objections, they will be decided in the final decision in a separate section. If there are no preserved objections, this section can be deleted.*

Findings of Fact: *The Findings of Fact should be in the order that follows the burden of proof.*

Initial Findings or opening numbered paragraphs of the decision must provide a brief factual and procedural history of the case. Findings as to what petitions and answers have been filed, a finding of any interlocutory orders (supersedeas, etc.) and findings about the injury (i.e., if the injury has been accepted by an NCP or if there are any supplemental agreements or final receipts executed by Claimant), should all be included here.

Factual Findings: *Each witness and piece of documentary evidence must be dealt with in a finding of fact. These can be done in paragraph form citing the critically important aspect of the witness's testimony or the relevance of the exhibit. Do not simply recount every word the witness said.*

Credibility determinations: A credibility determination must be made with regard to **all** of the evidence. **List specific reasons why the evidence is either credible or not credible, accepted or rejected.** This is the 'reasons' part of the decision and should be as specific as possible.

Please include reasons for why your client should prevail.

Final Findings: THESE MUST MIRROR WHAT SPECIFIC RELIEF IS BEING REQUESTED. The relief requested must be detailed and specific.

Conclusions of Law: *All conclusions of law should be done as to the burden of each party. Include **specific** conclusions of law to the disposition of each petition and what should be paid and by whom with a starting or ending date whatever is appropriate. These findings must be specific and detailed as to the relief being awarded.*

Order: *The Order is really just of mirror of the conclusions without the numbers.*